

AMENDED IN SENATE JUNE 12, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 500

Introduced by Assembly Member Lieu

February 20, 2007

An act to add Section 367.5 to, *and to repeal Sections 575.5, 575.6, and 1006.5 of*, the Code of Civil Procedure and to ~~amend Section 1000 of the Probate~~ *repeal Section 68070.1 of the Government Code*, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 500, as amended, Lieu. Civil actions: telephonic appearances.

Existing law regulates the procedure of civil actions and requires that every action be prosecuted by the real party in interest, except as specified. Existing law permits attorneys to make appearances by telephone at trial setting conferences, except as specified. *Existing law requires the Judicial Council to adopt standards of judicial administration governing the appearance of counsel by telephone at conferences and hearings. Existing law requires every superior court to provide for appearance of counsel by telephone in certain matters.*

This bill would permit a party *in a general civil case, as defined, who has provided notice*, to appear by telephone ~~in any conference or hearing at which witnesses are not expected to be called to testify at specified conferences, hearings, and proceedings. The bill would require the party choosing to appear by telephone to provide notice in either the moving or opposing papers or by oral or written notification at least 3 court days before the appearance. The bill would permit a court to provide teleconferencing appearances by entering into a contract with a private vendor, pursuant to which the vendor would be permitted to~~

~~charge a party appearing by telephone a reasonable fee, and would also permit a court to require a particular call provider to be used for telephone appearances~~ *require a party to appear in person at these hearings, conferences, or proceedings if the court makes a specified determination on a hearing-by-hearing basis. The bill would require a court to publish notice providing the information necessary to appear by telephone at conferences and hearings. The bill would also specify the application of these provisions to probate proceedings. the Judicial Council to adopt rules effectuating these provisions by January 1, 2008. The bill would repeal existing provisions that require the Judicial Council to adopt standards and procedures in connection with appearances by telephone and the superior courts to provide for appearances by telephone in certain matters. The bill would also make a statement of legislative intent.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 367.5 is added to the Code of Civil*
- 2 *Procedure, to read:*
- 3 *367.5. (a) It is the intent of this section to promote uniformity*
- 4 *in the procedures and practices relating to telephone appearances*
- 5 *in civil cases. To improve access to the courts and reduce litigation*
- 6 *costs, courts should, to the extent feasible, permit parties to appear*
- 7 *by telephone at appropriate conferences, hearings, and*
- 8 *proceedings in civil cases.*
- 9 *(b) Except as provided in subdivision (c), in all general civil*
- 10 *cases, as defined in the California Rules of Court, a party that has*
- 11 *provided notice may appear by telephone at the following*
- 12 *conferences, hearings, and proceedings:*
- 13 *(1) A case management conference, provided the party has made*
- 14 *a good faith effort to meet and confer before the conference as*
- 15 *required by law and has timely served and filed a case management*
- 16 *statement.*
- 17 *(2) A trial setting conference.*
- 18 *(3) A hearing on law and motion, except motions in limine.*
- 19 *(4) A hearing on a discovery motion.*
- 20 *(5) A conference to review the status of an arbitration or*
- 21 *mediation.*

1 (6) A hearing to review the dismissal of an action.

2 (7) Any other hearing, conference, or proceeding if the court
3 determines that a telephone appearance is appropriate.

4 (c) The court may require a party to appear in person at a
5 hearing, conference, or proceeding listed in subdivision (b) if the
6 court determines on a hearing-by-hearing basis that a personal
7 appearance would materially assist in the determination of the
8 proceedings or in the effective management or resolution of the
9 particular case.

10 (d) Consistent with its constitutional rulemaking authority, the
11 Judicial Council shall adopt rules effectuating the policies and
12 provisions in this section by January 1, 2008, and may adopt rules
13 relating to matters not covered by subdivision (a). The rules may
14 prescribe, but are not limited to prescribing, the notice to be given
15 by a party requesting a telephone appearance under subdivision
16 (a), the manner in which telephone appearances are to be
17 conducted, the conditions required for a party to be permitted to
18 appear by telephone, and provisions relating to the courts' use of
19 private vendors to provide telephone services.

20 (e) This section does not apply to any types of cases or types of
21 conferences, hearings, and proceedings except those specified in
22 subdivision (a). Consistent with its constitutional rulemaking
23 authority, the Judicial Council may by rule provide for the
24 procedures and practices, and for the administration of, telephone
25 appearances for all types of cases and matters not specified in
26 subdivision (a). For these other cases and matters, the Judicial
27 Council may specify the types of cases and matters in which parties
28 may appear by telephone, the types of cases and matters in which
29 parties shall appear personally, the conditions under which a party
30 may be permitted to appear by telephone, and any other rules
31 governing telephone and personal appearances that are within its
32 rulemaking authority.

33 SEC. 2. Section 575.5 of the Code of Civil Procedure is
34 repealed.

35 ~~575.5. (a) The Judicial Council shall adopt a standard of~~
36 ~~judicial administration governing the appearance of counsel by~~
37 ~~telephone at any pretrial, trial setting, or arbitration determination~~
38 ~~conference in a civil case.~~

39 ~~(b) The standard of judicial administration shall provide that~~
40 ~~counsel for a party may appear by telephone at such a conference~~

1 unless it is combined with a settlement conference or the court
2 orders the personal appearance of counsel.

3 ~~(e) Within six months after the Judicial Council has adopted~~
4 ~~that standard of judicial administration, the superior court of each~~
5 ~~county shall advise the Judicial Council whether it will incorporate~~
6 ~~the standard, a modified version thereof, or not provide for the~~
7 ~~appearance of counsel by telephone in its local rules.~~

8 *SEC. 3. Section 575.6 of the Code of Civil Procedure is*
9 *repealed.*

10 ~~575.6. Notwithstanding Section 575.5, the superior court of~~
11 ~~each county shall adopt a rule enabling the appearance of counsel~~
12 ~~by telephone at trial setting conferences in civil cases. A local rule~~
13 ~~adopted pursuant to this section may require the personal~~
14 ~~appearance of counsel at a civil trial setting conference for good~~
15 ~~cause stated.~~

16 *SEC. 4. Section 1006.5 of the Code of Civil Procedure is*
17 *repealed.*

18 ~~1006.5. (a) The Judicial Council shall adopt a standard of~~
19 ~~judicial administration governing the appearance of counsel by~~
20 ~~telephone at any hearing of a demurrer, an order to show cause,~~
21 ~~or a motion heard before the action is called for trial.~~

22 ~~(b) The standard of judicial administration shall provide that~~
23 ~~counsel for a party to a civil action may appear by telephone at~~
24 ~~any of those hearings unless (1) the action or proceeding is one~~
25 ~~filed pursuant to the Family Code, (2) any party notices an intent~~
26 ~~to present oral testimony, or (3) the court orders the personal~~
27 ~~appearance of counsel.~~

28 ~~(e) Within six months after the Judicial Council has adopted~~
29 ~~that standard of judicial administration, the superior court of each~~
30 ~~county shall advise the Judicial Council whether it will incorporate~~
31 ~~the standard, a modified version thereof, or not provide for the~~
32 ~~appearance of counsel by telephone in its local rules.~~

33 *SEC. 5. Section 68070.1 of the Government Code is repealed.*

34 ~~68070.1. (a) Except as otherwise provided in this section,~~
35 ~~counsel shall have the option of appearing by telephone in any~~
36 ~~nonevidentiary law and motion and probate hearings and~~
37 ~~conferences, and every superior court shall provide for appearances~~
38 ~~of counsel in those hearings and conferences by telephone.~~

39 ~~Counsel shall have the option of appearing by telephone in~~
40 ~~nonevidentiary trial setting conferences in superior courts in~~

1 counties subject to the Trial Court Delay Reduction Act of 1986
2 (Article 5 (commencing with Section 68600) of Chapter 2 of Title
3 8) if the superior court has provided that option by local rule or
4 written local policy.

5 The Judicial Council may provide, by rule, for the exclusion of
6 specified types of hearings or conferences from this subdivision.

7 (b) ~~On or before March 1, 1988, the Judicial Council shall~~
8 ~~establish a pilot project for teleconferencing in nonevidentiary law~~
9 ~~and motion and probate hearings and conferences in the superior~~
10 ~~courts in at least 10 counties selected by the Judicial Council. If a~~
11 ~~pilot project court is not subject to the Trial Court Delay Reduction~~
12 ~~Act of 1986, it shall also provide teleconferencing in~~
13 ~~nonevidentiary trial setting conferences; and all other pilot project~~
14 ~~courts may provide for teleconferencing in nonevidentiary trial~~
15 ~~setting conferences by local rule.~~

16 (c) ~~The Judicial Council shall adopt model procedures to guide~~
17 ~~superior courts in the development of teleconferencing procedures.~~

18 ~~SECTION 1. Section 367.5 is added to the Code of Civil~~
19 ~~Procedure, to read:~~

20 ~~367.5. (a) A party may appear by telephone in any conference~~
21 ~~or hearing at which witnesses are not expected to be called to~~
22 ~~testify.~~

23 (b) ~~(1) A party choosing to appear by telephone at a hearing~~
24 ~~pursuant to this section shall do either of the following:~~

25 (A) ~~Place the phrase "Telephone Appearance" below the title~~
26 ~~of the moving or opposing papers.~~

27 (B) ~~At least three court days before the appearance, notify the~~
28 ~~court and all other parties of the party's intent to appear by~~
29 ~~telephone. If the notice is oral, it shall be given either in person or~~
30 ~~by telephone. If the notice is in writing, it shall be given by filing~~
31 ~~a "Notice of Intent to Appear by Telephone" with the court at least~~
32 ~~three court days before the hearing and by serving the notice at~~
33 ~~that time on all other parties by personal delivery, facsimile,~~
34 ~~express mail, or another means that will reasonably ensure delivery~~
35 ~~to the parties no later than the close of the next business day.~~

36 (2) ~~If a party that has given notice that he or she intends to~~
37 ~~appear by telephone subsequently chooses to appear in person, the~~
38 ~~party shall notify the court and all other parties that have appeared~~
39 ~~in the action, by telephone, at least two court days before the~~

1 ~~hearing at which the party has previously noticed an intent to~~
2 ~~appear by telephone.~~

3 ~~(e) A court may provide teleconferencing for court appearances~~
4 ~~by entering into a contract with a private vendor. The contract may~~
5 ~~provide that the vendor may charge the party appearing by~~
6 ~~telephone a reasonable fee, specified in the contract, for its services.~~

7 ~~(d) The court shall ensure that the statements of participants are~~
8 ~~audible to all other participants and that the statements made by a~~
9 ~~participant are identified as being made by that participant.~~

10 ~~(e) All proceedings involving telephone appearances shall be~~
11 ~~reported to the same extent and in the same manner as if the~~
12 ~~participants had appeared in person.~~

13 ~~(f) A court, by local rule, may designate a particular conference~~
14 ~~call provider that shall be used for telephone appearances.~~

15 ~~(g) The court shall publish notice providing parties with the~~
16 ~~particular information necessary for them to appear by telephone~~
17 ~~at conferences and hearings in that court under this section.~~

18 ~~SEC. 2. Section 1000 of the Probate Code is amended to read:~~

19 ~~1000. Except to the extent that this code provides applicable~~
20 ~~rules, the rules of practice applicable to civil actions, including,~~
21 ~~but not limited to, Section 367.5 of the Code of Civil Procedure~~
22 ~~or discovery proceedings and proceedings under Title 3a~~
23 ~~(commencing with Section 391) of Part 2 of the Code of Civil~~
24 ~~Procedure, apply to, and constitute the rules of practice in,~~
25 ~~proceedings under this code. All issues of fact joined in probate~~
26 ~~proceedings shall be tried in conformity with the rules of practice~~
27 ~~in civil actions.~~